the average date of cancellation. (R. 94, 97.) At the time of the requisition of the contracts, the petitioner had provided itself with the materials, equipment, and labor to perform the contracts and was ready, able, and willing to complete performance. (R. 82.) At the time of the cancellation of the contracts, the petitioner could have completed them at a cost which would have yielded it a net profit of $370,663.81 if it had received the full contract price. (R. 85–86.) There is no finding as to the financial condition of the parties with whom the petitioner originally made the contracts.

REASONS FOR NOT OPPOSING THE PETITION

The precise question here involved seems never to have been decided by any other court. We know of no similar pending cases, but the question can hardly be dismissed as one of no general importance, as it involves the construction of a Federal statute, in the light of the constitutional obligation of the United States to provide just compensation. The petitioner's brief discusses the cases in this Court which have some bearing upon the question here involved. We know of no other cases which are helpful. Although we do not regard any case cited as in direct conflict with the decision below, the question presented is not free from doubt and may well be considered worthy of review in this Court. In making this statement, we do not mean to be understood as agreeing with the contentions

of the petitioner or as accepting its analysis of any of the cases discussed.

Respectfully submitted.

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APRIL, 1931.

APPENDIX

STATUTES INVOLVED

The Act of March 4, 1917, c. 180, 39 Stat. 1168, 1193, provides in part:

* * * * *

(b) That in time of war, or of national emergency arising prior to March first, nineteen hundred and eighteen, to be determined by the President by proclamation, the President is hereby authorized and empowered, in addition to all other existing provisions of law:

* * * * *

Second. Within the limit of the amounts appropriated therefor to modify or cancel any existing contract for the building, production, or purchase of ships or war material; and if any contractor shall refuse or fail to comply with the contract as so modified the President may take immediate possession of any factory of such contractor, or any part thereof, without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Third. To require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output of such factory, and, within the limit of the amounts appropriated therefor, to deliver such output or parts

thereof in such quantities and at such times as may be specified in the order at such reasonable price as shall be determined by the President.

* * * * *

(d) That whenever the United States shall cancel or modify any contract, make use of, assume, occupy, requisition, or take over any factory or part thereof, or any ships or war material, in accordance with the provisions of paragraph (b), it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid fifty per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said fifty per centum shall make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The Emergency Shipping Fund provisions of the Act of June 15, 1917, c. 29, 40 Stat. 182, 183, provide, in part:

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

* * * * *

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

* * * * *

(e) To purchase, requisition, or take over the title to, or the possession of, for use or

operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

* * * * * *

Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

U. S. GOVERNMENT PRINTING OFFICE: 1931